IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

Crl.MC.No. 414 of 2007()

PETITIONER: PETITIONER/ACCUSED NO.3

BIJU,S/O.PALLIL KRISHNANKUTTY,POTTA VILLAGE,THRISSUR DISTRICT.

BY ADV. SRI.P.K.ASHOKAN
SMT.DHANYA P.ASHOKAN

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE OF KERALA,REP.BY THE PUBLIC PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 19/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.414 of 2007

Dated this the 19th day of February 2007

O R D E R

The petitioner is one of the thirty five accused who faced allegations interalia under Section 307 read with 149 I.P.C and Section 3 of the Explosive Substances Act. The crux of the allegation raised against the accused persons is that they were members of an unlawful assembly. At 7.30 p.m on 05/03/1994, the members of the unlawful assembly allegedly indulged in wanton acts of violence in prosecution of the common object of the unlawful assembly. The final report was filed and cognizance was taken long later in 2000 and C.P.No.16/01 was registered before the learned Chief Judicial Magistrate of First Class, Chalakudy. Case was committed to the court of Session. The petitioner was not available for trial. All except three accused persons including petitioner/third accused faced trial and the accused who faced trial were acquitted as per Annexure C judgment passed by the Additional Assistant Sessions Judge, Irinjalakkuda. The petitioner has come to this court now with the prayer that the proceedings against him may be quashed

invoking the powers under Section 482 Cr.P.C.

2. The judgment of acquittal clearly shows that there was no identification of the accused persons who faced trial and in these circumstances, though the victims/police officers were willing to speak about the incident, no finding was entered against the accused persons who faced trial. Moosa vs. Sub Inspector of Police [2006(1) KLT 552 (FB)] is authority for the proposition that the mere fact that the co-accused have been acquitted on the basis of the trial held and the evidence adduced in such trial is no reason for an absconding co-accused to claim quashing of proceedings acquittal on that sole ground. In the said trial, there was no occasion to adduce any evidence against the absconding co-accused as their complicity was not an issue at all in the said trial. In these circumstances, the mere fact that the co-accused who also faced allegations along with the petitioners have been acquitted on the ground that their identity is not established cannot be a valid reason to justify invocation of the powers under Section 482 Cr.P.C. I shall carefully avoid any detailed expression of opinion on merits about the acceptability of the allegations raised against the petitioners. I am satisfied that this is a fit case where the petitioner must appear before the

court and claim discharge at the appropriate stage of Section 227/228 Cr.P.C.

3. The learned counsel for the petitioner submits that a non-bailable warrant is pending against the petitioner. The learned counsel for the petitioner submits that it was not a case where the petitioner absconded but it was a case where the petitioner was obliged to leave this country to take up employment abroad. Though the incident took place in 1994, the final report was filed only in 2000 and the petitioner could not have waited all along for the filing of the charge sheet.

4. It is for the petitioner to appear before the court concerned and explain to the court concerned, the circumstances under which he could not earlier appear before the court concerned. I find absolutely no reason to assume that the said court would not consider the cause which the petitioner has to show on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient General directions have been issued in Alice George vs. Deputy Superintendent of Police [2003 (1)KLT 339].

4. In the result, this Crl.M.C is dismissed but with the specific observation that if the petitioner surrenders before the court concerned, after giving sufficient prior notice to the learned Public Prosecutor in charge of the case, the court concerned must proceed to consider the application for bail on merits, in accordance with law and expeditiously - on the date of surrender itself unless there are compelling reasons. I do make it clear that the dismissal of this Criminal Miscellaneous Case will not in any way fetter the rights of the petitioner to claim discharge at the stage of Section 227/228 Cr.P.C.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006